

SENATE, No. 1090

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 31, 2022

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Requires "just compensation" for condemnation of single-family residence to be based on cost of comparable relocation properties within 20 mile radius.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning just compensation for certain residential
2 condemnations and amending P.L.1971, c.361.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. Section 6 of P.L.1971, c.361 (C.20:3-6) is amended to read
8 as follows:

9 6. Whenever any condemnor shall have determined to acquire
10 property pursuant to law, including public property already devoted
11 to public purpose, but cannot acquire title thereto or possession
12 thereof by agreement with a prospective condemnee, whether by
13 reason of disagreement concerning the compensation to be paid or
14 for any other cause, the condemnation of such property and the
15 compensation to be paid therefor, and to whom payable, and all
16 matters incidental thereto and arising therefrom shall be governed,
17 ascertained and paid by and in the manner provided by this act;
18 provided, however, that no action to condemn shall be instituted
19 unless the condemnor is unable to acquire such title or possession
20 through bona fide negotiations with the prospective condemnee,
21 which negotiations shall include an offer in writing by the
22 condemnor to the prospective condemnee holding the title of record
23 to the property being condemned, setting forth the property and
24 interest therein to be acquired, the compensation offered to be paid
25 and a reasonable disclosure of the manner in which the amount of
26 such offered compensation has been calculated, and such other
27 matters as may be required by the rules. Prior to such offer the
28 taking agency shall appraise said property and the owner shall be
29 given an opportunity to accompany the appraiser during inspection
30 of the property. Such offer shall be served by certified mail. In no
31 event shall such offer be less than the taking agency's approved
32 appraisal of the fair market value of such property. In the case of a
33 single-family residential property, the taking agency's approved
34 appraisal of the fair market value of the property shall be increased
35 in order to reflect the average purchase price of comparable
36 relocation properties. A rejection of said offer or failure to accept
37 the same within the period fixed in written offer, which shall in no
38 case be less than 14 days from the mailing of the offer, shall be
39 conclusive proof of the inability of the condemnor to acquire the
40 property or possession thereof through negotiations. When the
41 holder of the title is unknown, resides out of the State, or for other
42 good cause, the court may dispense with the necessity of such
43 negotiations. Neither the offer nor the refusal thereof shall be
44 evidential in the determination of compensation.

45 For the purposes of this section, "comparable relocation
46 properties" means single-family residential dwellings located within

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 a 20 mile radius of the property being condemned. Comparable
2 relocation properties shall be characterized by similar lot and house
3 size, similar improvements, similar natural, governmental, cultural,
4 and commercial amenities, and shall be located within school
5 districts having the same or higher Department of Education district
6 factor group designation.
7 (cf: P.L.1971, c.361, s.6)

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9 2. Section 12 of P.L.1971, c.361 (C.20:3-12) is amended to
10 read as follows:

11 12. (a) Waiver of appointment of commissioners. By
12 stipulation filed in the cause, the condemnor and all condemnees
13 may waive the appointment of commissioners and in such event, the
14 action shall proceed to trial before the court.

15 (b) Appointment and qualification of commissioners. Upon
16 determination that the condemnor is authorized to and has duly
17 exercised its power of eminent domain, the court shall appoint 3
18 commissioners to determine the compensation to be paid by reason
19 of the exercise of such power. Such commissioners shall be
20 residents of the county in which any part of the property being
21 condemned is located or, in the case of the commissioner who must
22 be an attorney, be actively engaged in the practice of law in the
23 county. One of such commissioners shall be an attorney, admitted
24 to practice in this State for at least 10 years, who shall preside at all
25 hearings and rule on all questions of evidence and procedure,
26 subject to a review by a majority of the commissioners. The
27 commissioners shall take and subscribe an oath faithfully and
28 impartially to perform their duties, and to make a true award to the
29 best of their skills and understanding, which oath shall be filed with
30 their award. Should a commissioner die, become disqualified,
31 unable, neglect or refuse to act, the remaining 2 commissioners
32 shall perform the duties of office with the same authority as if all
33 commissioners were acting. The court may fill any vacancy in
34 office, and for cause, may vacate any appointment and appoint a
35 successor in office.

36 (c) Hearings--subpoena. Upon notice of at least 10 days, the
37 commissioners shall hold hearings at which the parties and their
38 witnesses may be heard, under oath, administered by any
39 commissioner. The conduct of the hearings shall be governed by
40 the rules of evidence except that testimony as to comparable sales
41 shall be considered an exception to the hearsay rule. The
42 compulsory attendance of witnesses and production of records
43 thereat may be compelled by the commissioners. At the request of
44 any party, and at his expense, a stenographic record of the hearing
45 shall be maintained. A majority of commissioners shall be in
46 attendance at all hearings.

47 (d) Limited discovery. At least 15 days prior to the hearing the
48 parties shall exchange a list of comparable sales and, in the case of

1 a single-family residence, a list of comparable relocation properties
2 as defined in section 6 of P.L.1971, c.361 (C.20:3-6), intended to be
3 introduced by them setting forth as to each comparable sale or
4 comparable relocation property the following information: name of
5 seller and purchaser; location of property by block, lot and
6 municipality; date of sale; the consideration; and book and page of
7 recording. No party shall be permitted to offer testimony of any
8 comparable sale or comparable relocation property not set forth in
9 said list unless consented to by all other parties. There shall be no
10 discovery on the issue of the authority to condemn except by leave
11 of court.

12 (e) Proof. At the hearing, the condemnor shall proceed first to
13 offer proof of the nature and extent of the taking, and its opinion of
14 the compensation payable by reason thereof.

15 (f) Inspection of property. Commissioners may inspect the
16 property being condemned, and shall so inspect when requested by
17 any party, and in addition, when requested by any party, the
18 commissioners shall inspect two of the comparable sales or, with
19 respect to the condemnation of a single-family residence,
20 comparable relocation properties, testified to by said party. Such
21 inspection may be in the absence of the parties, unless attendance at
22 inspection is requested by the parties, or any of them. This right of
23 inspection shall exist notwithstanding that the structures on the
24 property may have been demolished and the site altered.

25 (g) Award of commissioners. Within 4 months next following
26 their appointment, or within any extended period in accordance with
27 the rules, the commissioners, or a majority of them, shall make and
28 file in form and content fixed by the rules, an award fixing and
29 determining the compensation to be paid by the condemnor. The
30 requirements respecting the time of filing of such award shall be
31 directory and not mandatory, and a failure to make and file the same
32 within the time specified, shall not invalidate the award or oust the
33 commissioners of jurisdiction to complete their duties. Upon its
34 own motion, or on application of any party, made within 60 days
35 after the filing of the award, the court may authorize the
36 commissioners to amend, supplement, modify, or correct their
37 award.

38 (h) Judgment. Any award as to which no appeal is taken in
39 accordance with the rules, shall become final as of course, and shall
40 constitute a final judgment. If not paid within 60 days after final
41 judgment, execution may issue as in other actions at law.

42 (i) Commissioners' fees and expenses. The court, upon
43 application of any party, including the commissioners, shall fix
44 reasonable fees, costs and expenses of the commissioners, clerks
45 and other persons performing any of their duties, all of which shall
46 be paid by the condemnor.

47 (cf: P.L.1971, c.361, s.12)

1 3. Section 13 of P.L.1971, c.361 (C.20:3-13) is amended to
2 read as follows:

3 13. (a) Parties Any party who has appeared at the hearings of
4 the commissioners, either personally or through an attorney, may
5 appeal from the award of the commissioners. Such appeal shall be
6 taken within the period and in the manner provided by the rules.
7 The necessary parties to the appeal shall be only such parties who
8 have appeared at the commissioners' hearings. Other parties may
9 be admitted by the court pursuant to the rules.

10 (b) Hearing on appeal The hearing on appeal shall be a trial de
11 novo, as in other actions at law, without a jury, unless a jury be
12 demanded. The award of the commissioners shall not be admitted
13 in evidence.

14 (c) Limited discovery A valuation expert who has not testified
15 at the hearing before the commissioners shall not be permitted to
16 testify at the trial de novo, unless, within 15 days before trial the
17 party offering such testimony gives notice to the other parties to the
18 appeal of the name and address of such expert and his opinion of
19 the amount of compensation and information relative to comparable
20 sales and, in the case of a single-family residence, relative to
21 comparable relocation properties as defined in section 6 of
22 P.L.1971, c.361 (C.20:3-6), as required by the rules. The
23 information required by the rules shall be supplied as to all
24 additional comparable sales and, in the case of a single-family
25 residence, all additional comparable relocation properties as defined
26 in section 6 of P.L.1971, c.361 (C.20:3-6), not previously testified
27 to before commissioners.

28 (d) Payment of amount of judgment on appeal; right to
29 possession; lien; other remedies The amount of the judgment on
30 the appeal, or so much thereof as shall not have been paid, shall be
31 paid to the parties entitled thereto or paid into court.

32 If possession shall not have been taken theretofore, the
33 condemnor, upon payment as aforesaid, may notwithstanding any
34 further appeal or other proceedings, take possession of the lands or
35 other property for the purposes for which the same was authorized
36 to be taken.

37 (cf: P.L.1971, c.361, s.13)

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39 4. This act shall take effect immediately.

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STATEMENT

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44 This bill is intended to provide financial justice to owners of
45 single-family residences who receive inadequate compensation
46 when their properties are condemned. The New Jersey Constitution
47 requires condemnors to pay "just compensation" when a private
48 property is taken for a public use. Just compensation is generally

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1 based on an appraisal of the fair market value of a property.
2 Usually, the fair market value of a property being condemned is not
3 sufficient for the family, whose lives are being totally disrupted, to
4 purchase a similar property in the same general area. This bill
5 addresses this unfair situation by requiring that the compensation
6 paid be based on the cost of comparable relocation properties within
7 a 20 mile radius of the property being condemned. Comparable
8 relocation properties would be properties of a similar lot and house
9 size, with similar improvements, similar natural, governmental,
10 cultural, and commercial amenities, and located within a school
11 district having the same or a higher Department of Education
12 district factor group designation. Allowing households that are
13 disrupted by condemnation proceedings to relocate within the same
14 area or a similar area without additional financial burdens is the
15 most "just" way of compensating these owners for the public taking
16 of their homes.